IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.26 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

and

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

MEHSANA DISTRICT CO-OPERATIVE MILK PRODUCERS UNION LTD

Appearance:

1. INCOME TAX REFERENCE No. 26 of 1993

MR TANVISH U BHATT for Applicant No. 1

MR JP SHAH for Respondent No. 1

MR MANISH J SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

and

HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 24/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following question for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax, Gujarat-I, Ahmedabad :-

Whether, the Appellate Tribunal is right in law and on facts in deleting the addition to the extent of Rs.5,47,69,105/- being the alleged additional price towards purchase of Milk, sanctioned on the last day of the accounting year i.e. 31.3.1984 ?

2. The Assessment Year is 1984-85 and the relevant accounting period is the Financial Year ended on 31st March, 1984. The assessee, a Co-operative Society, filed its return of income on 31st August, 1984 returning NIL income. However, after making various additions and disallowances the Assessing Officer framed an assessment under Section 143(3) of the Act on 18th March, 1987 on a total income of Rs.8,01,67,335/-. Out of the various additions / disallowances the only issue which falls for consideration is payment of Rs.5,47,69,105/- made to other co-operative societies, who are members of the assessee - Society, for supply of milk.

3. The assessee is the apex co-operative society, in other words a federation of various milk producers' co-operative societies. Such member societies are having individuals as its members. The individuals supplied milk to the co-operative societies of which they are members; and such co-operative societies, namely, member co-operative societies, in turn supplied milk to the assessee. The milk so procured is sold by the assessee to consumers. It appears that the assessee made payment of Rs.5,47,69,105/- to its member societies by way of additional price on 31st March, 1984.

4. According to the Assessing Officer, the aforesaid payment by way of additional price was not allowable as a deduction either under Sections 28 or 37(1) of the Act because - (i) the payment was made on the last day of the accounting period; (ii) the payment was not guided by any commercial principles; (iii) the price increase declared by the Managing Board of the assessee had nothing to do with the market conditions and hence it was a case of profit adjustment with an objective of evading tax.

5. According to the Assessing Officer, milk was

regularly purchased from the member societies and every 10th day payments were made to the members. During accounting year prices were revised from time to time. In this way between April 1983 to 30th March, 1984 a sum of Rs.48,36,21,076/- was paid as procurement price. That additional payment was made @ 12-1/2% of the prices paid from April to February to the suppliers of buffalo milk and additional payment @ 15% of prices paid from April to February to the suppliers of cow milk, but there was no basis, justification or calculation for arriving at the aforesaid rates. Despite the assessee having been called upon to submit information and the basis, the data which formed the basis for arriving at a decision by the Board was not submitted, except for general and vague statement to the effect that the same had been fixed after considering the market price of milk prevailing in the region, the supply and demand of milk as well as the prevailing market prices applicable in case of similarly situated Milk Producers' Union in adjoining districts. The Income-tax Officer met this contention by stating that he had made inquiries and in case of one milk producer in Mehsana the prices were lower than those paid by the assessee. Thus, in light of the these factors considered together, the Income-tax Officer made the disallowance.

6. The assessee carried the matter in appeal before the CIT (Appeals). The CIT (Appeals), for the reasons stated in his order dated 22nd March, 1988, confirmed the assessment order on this point. He distinguished the decision of the Andhra Pradesh High Court in the case of Armoor Co-operative Marketing Society Vs. Commissioner of Income-Tax, [1987] 167 ITR 565 which was cited by the assessee before him on the ground that in the said case the Registrar of Co-operative Societies had advised the assessee in that case to pay back a good proportion of profit made by the assessee to the cultivators as bonus, but in the present case there was no such compulsion. The CIT (Appeals) also distinguished the decision of the Appellate Assistant Commissioner in case of Kaira District Milk Producers' Union which was relied upon by the assessee as being identical on facts by stating that the facts were different. According to the CIT (Appeals) the payment was in the nature of application of income by the assessee; the additional payment was under a self generated obligation and hence even if such an obligation was discharged, the assessee was not entitled to deduction of such additional payment.

7. When the matter was carried in appeal before the Tribunal, there was a difference of opinion between the

Judicial Member and the Accountant Member and, therefore, under Section 255(4) of the Act the following point of difference was referred to a third member through the President of the Tribunal :

"Whether the payment of Rs.5,47,69,105/- is an allowable deduction ?"

It may be noted that Judicial Member had accepted the case of the department while the Accountant Member had accepted the stand of the assessee. The Third Member, for the reasons recorded in his order dated 20th March, 1990 concurred with the view expressed by the Accountant Member and held that the sum of Rs.5,47,69,105/- was part of the purchase price only, determined at the end of the year, payable to the primary societies and not distribution of profits. It was further held that mere inability of the assessee - society to explain the basis for arriving at the aforesaid amount cannot convert the nature of the payment, which was nothing but an additional purchase price, into distribution of profits. That determination of percentages must be left to the wisdom of the Board of Directors and merely because the mechanics for arriving at that figure was not furnished, no adverse view could be taken against the assessee. It was further held that even if the percentages were determined to peg the profits at a pre-determined level, yet the nature of the payment would not change and could not be termed to be distribution of profits. In relation to the solitary instance relied upon by the Assessing Officer for the purposes of comparing the purchase price/market price, it was held that the said instance was a case of a small trader, a private dairy and hence was not comparable. That against that the assessee had been able to establish that other co-operative societies, namely, similarly situated apex societies, had followed the same method for payment of purchase price and there was no reason to discard the said method, the department having accepted in case of other similarly situated societies. Lastly, it was held that in case of the assessee itself, past practice adopted by the assessee - society for fixation of purchase price was the same and such practice had been accepted and approved by the department over a period of years, and the same could not be termed as irrelevant without there being any distinguishing features.

8. Mr.Tanvish U. Bhatt, learned Standing Counsel appearing on behalf of the applicant, submitted that before an expenditure could be allowed under Section 37(1) of the Act, it was necessary for the assessee to

establish that the conditions prescribed by the said provision stood fulfilled. That even if it is accepted that the expenditure was not in the nature of expenditure falling within Sections 30 to 36, was not in the nature of capital expenditure and was not personal in nature, the assessee was yet required to establish that expenditure was laid out or expended wholly and exclusively for the purpose of the business or profession. That the term "wholly" denoted quantum of the expenditure while the term "exclusively" denoted the motive or the justification or the basis for the expenditure. That once the respondent had failed to justify incurring of expenditure it was not entitled to any deduction thereof. In other words, there being no basis for the rate of payment of additional price, and the assessee having failed to satisfy the Assessing Officer as to motive for incurring the expenditure, it was within the power and jurisdiction of the Assessing Officer to make the disallowance.

8.1 A further contention was raised that, while making payment of price in the accounting period the assessee had informed the primary societies through their circulars that the amount that was being paid was provisional price and the final price would be worked out and paid subsequently, would merely create an obligation qua the assessee but there was no overriding charge. In other words, the submission was that it was a discretion available to the assessee and it was not binding on the assessee to make further payment merely because the circulars were issued during the accounting period. Lastly, it was submitted that the net effect was that the assessee had not incurred any expenditure as such but the same was application of income and in absence of any overriding charge, such an application of income could not be treated as an outgoing which is allowable as a deduction while computing profits and gains of business. In support of the submissions made, reliance has been placed on the following decisions :

(i) Siddho Mal & Sons Vs. Income-tax Officer, District D-I, New Delhi, [1980] 122 ITR 839 (Delhi);

(ii) Commissioner of Income-tax, Bombay City-II Vs. Sitaldas Tirathdas, [1961] 41 ITR 367 (SC); and

(iii) Colaba Central Cooperative Consumers' Wholesale and Retail Stores Ltd. Vs. Commissioner of Income-tax, [1998] 229

9. Mr.J.P.Shah, learned advocate appearing on behalf of the respondent - assessee, submitted that the emphasis on behalf of the Revenue regarding allowability of expenditure under Section 37 of the Act was misplaced, that the assessee had never made a claim under the said provision. The assessee was making a claim under Section 28 of the Act whereunder profits and gains of any business carried on by an assessee during the previous year are brought to tax as income under the head "Profit and gains of business or profession". According to him, while working out such profits, the word "profits" has to be understood in its natural and proper sense i.e. in a sense which no commercial man would misunderstand. That applying this test before any profit could be arrived at one has to deduct purchase price from the sale price. He also invited attention to clause 4.2 of the Byelaws of the assessee - society with special reference to sub-clause 2.2 to emphasise that the main object of the assessee - society was to make arrangement for disposal of milk and milk products of its members by procuring the same from its members and dispose of the same so as to obtain best advantage. It was, therefore, urged that if the aforesaid object was borne in mind it was apparent that the assessee - society had merely acted in furtherance of the said object. That the payment for the year under consideration when compared with the immediately preceding year reflected that overall only 3% more purchase price was paid when compared to the purchase price of the immediately preceding year. Mr.Shah placed reliance on the decisions in case of - (i) Radhasoami Satsang Vs. Commissioner of Income-tax, [1992] 193 ITR 321 (SC); (ii) Taraben Ramanbhai Patel & Ors. Vs. Income-tax Officer & Ors., [1995] 215 ITR 323 (Guj.); and (iii) Lalludas Children Trust Vs. Commissioner of Income-tax, [2001] 251 ITR 50 (Guj.) for the proposition that in absence of any material change justifying the department to take a different view from that taken in earlier proceedings, the question of allowability of purchase price could not have been agitated. That the facts in the earlier years were identical was not disputed and such finding of fact had already been recorded by the Tribunal.

9.1 Hon'ble Supreme Court's decision in the case of Berger Paints India Ltd. Vs. Commissioner of Income-tax, [2004] 266 ITR 99 was cited in support of the proposition that once the Revenue had not challenged the same modality of working out a payment of purchase price in case of other societies, it was not open to the

Revenue to challenge its correctness in case of the assessee, without just cause. The decision in case of Commissioner of Income-tax, Andhra Pradesh Vs. Dhanrajgirji Raja Narasingirji, [1973] 91 ITR 544 (SC) was cited for the proposition that it was for the assessee to decide what expenditure to incur and how best to protect its own interest; that it was not open to the department to prescribe what expenditure an assessee should incur in what circumstances the assessee should incur that expenditure. He, therefore, urged that the majority opinion of the Tribunal deserve acceptance and the Revenue's reference was required to be rejected answering the question in favour of the assessee.

10. The following facts have been recorded by the Tribunal (Third Member) while expressing the majority view :

"2. The assessee cooperative society is established under the Gujarat Cooperative Societies Act. Its members are primary cooperative milk producing societies situated in various villages in Mehsana district. The number is around 889 in the period under consideration. These primary societies in turn are constituted by individuals, who supply milk to the primary societies. The primary societies than supply the milk so collected from its individual members to the assessee society which is an apex society as far as the district of Mehsana is concerned. The individuals, who constituted these primary societies numbered about 2,20,000 during the year under consideration. The assessee society came into existence on 8.11.1960. Its main object, as stated in clause 4.1 of the Bye-laws is :

"The main object of the Union is to carry out the activities for economic and social development of the Agriculturists, by efficiently organising processing and marketing of Agricultural and allied produce."

To achieve the aforesaid main object of the society, the society had undertaken several other activities, one of which was of procuring milk. Clause 4.2 sub-clause 2.2 mentions the arrangements that the assessee society had made for the procurement of the milk and its

disposal:

Clause 4.2 Sub-clause 2.2

"To make arrangements for the disposal of the milk and the milk products of its members or of the members of its affiliated societies, on commission basis or to purchase the milk and milk products of its members or the members of its affiliated societies either on cash or on credit as the circumstances permit and dispose off them to the best advantage. Also to purchase milk from private sources in case the supply from members falls short of the demand."

The affairs of the assessee society are regulated, controlled and supervised by a Board of Directors, twelve of whom are drawn from the affiliated societies, one representative of other societies and individual members, one nominee of the Registrar of Cooperative Societies, one nominee each of the Financial Institutions like Gujarat Industrial & Investment Corporation, Indian Dairy Corporation, National Dairy Development Board, Mehsana District Central Cooperative Bank Ltd. The Managing Director is the ex-officio member. One member is also drawn from Gujarat Cooperative Milk Marketing Federation Ltd. The manner of distribution of profits also was provided in clause 54 of the Articles, which in particular provided that after providing for all the expenses, bonus, provision for Income-tax, provision for the payment of the dividend on the paid up share capital as per the provisions of the Cooperative Societies Act and Rules as decided by the annual general meeting and the balance of profit, if any, is to be transferred to the general fund, which can be used with the approval of the General Body meeting either for distribution among the members supplying the milk and milk products or for research and development work or for dividend equalisation or for charity fund or for Cooperative training and promotion purposes. Thus the distribution of profits is subjected to very strict control and it has to be in the stipulated channels. As seen the stipulated channel was if it is to be

distributed among the members supplying milk and milk products, it has to be out of general fund and that too after the approval of the General Body meeting. In other words, nothing can be distributed to the members supplying the milk except by the approval of the General Body in their annual general meetings.

3. As I have mentioned a short while ago, the assessee society sells the milk supplied to it by its members to the consumers. It makes payment for the milk supplied to it by the member societies on the basis of a price per unit called "Kilo Fat". This price is not stationary for the entire year but it is ambulatory and is revised from time to time depending upon several factors, which include the fat contents of the milk supplied. The Milk supplied was both buffalo's as well as cow's milk. For the period from 1.4.1983 to 20.12.1983 the prices fixed were Rs.41/- per Kilo fat and Rs.18.100 per kilo fat respectively for buffaloes and cows milk. It was revised to Rs.43/- and Rs.19.10 per kilo fat with effect from 21.21.1983 and that continued till 31.1.1984. Again on 1.2.1984 the price was revised to Rs.46/- per kilo fat and Rs.20.35 per kilo fat respectively and that continued to the end of the accounting year, namely, 31.3.1984. Thus the price was revised three times in the accounting year. The total amount paid on the basis of these purchase prices was Rs.48,36,21,076/-. I also state here that the revision of the prices was made through circulars issued on different dates i.e. 26.2.1982, 20.12.1983 and 27.1.1984 respectively. These circulars provided that the prices determined were only provisional e.g. in the circular dated 27.1.1984 by which the price was revised to Rs.46/- and Rs.20.35 per kilo fat respectively for buffaloes and cows milk, the circular read as under:-

"This is to inform all the Milk Producing Cooperative Societies that with effect from the morning of 1.2.84 the milk purchase price per kilo fat will be as under till the next change is intimated to you.

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The prices fixed above are ad

hoc/provisional from 1.4.83 and the prices for milk fixed as above are Provisional. After considering the amount realised by the Union of the milk received from the societies at the end of the years, the final price increase/decrease will be decided and shall be intimated."

It was in pursuance of this undertaking to fix the final price increase or decrease that the Board of Directors of the assessee society at is meeting held on 31.3.1984, for which notice was issued on 24.3.1983, passed the following resolution:

"The milk purchase prices paid to the Milk Producing Cooperative Societies during the year have been provisional. It is hereby resolved that the final prices be paid to Cooperative Societies to enable them to pay, to their milk producers on good milk supplied by them during the period April, 1983 to February 1984, at the rate on the provisional price paid for good quality buffalo milk supplied at 12.5% and on good quality cow milk supplied at the 15.5% and accordingly the final price for the current year is decided/fixed."

11. Pursuant to the aforesaid resolution, the additional purchase price which became payable to the supplier societies came to be paid and this is the figure of Rs.5,47,69,105/- which is in dispute.

12. In light of the aforesaid findings, undisputed facts which have come on record are, that the amount has in fact gone out of the coffers of the assessee - society and has been received by the milk supplying societies. The Tribunal has taken note of the object clauses which appear in the Bye-laws and which have been reproduced hereinbefore as well as the meaning of distribution of profits as provided in clause 54 of the Articles. This assumes importance in light of the fact that the payment made by the assessee - society is and can be termed in furtherance of its object and cannot be treated as a payment not incurred for the business of the assessee society. The Tribunal has also taken note of the rates made applicable to the purchases from time to time. While referring to the rates at which the purchase price

was paid from time to time the Tribunal has noted a very important and relevant factor, namely, that in the beginning of the accounting period Rs.41/- per Kilo Fat was paid despite the fact that in the immediately preceding accounting period the average price paid by the assessee was Rs.45.75 per Kilo Fat. In other words, no supplier would accept a price lower than the price which was paid in immediately preceding month unless and until he was assured that the difference, if any, would be made up subsequently when the final price was paid.

13. The Tribunal has taken note of the fact that during the accounting period three circulars dated 26th February, 1982, 28th December, 1983 and 27th January, 1984 were issued whereby the purchase price paid under each of the circulars was specifically treated as ad hoc/provisional and that the final price, which may increase/decrease, would be decided at the end of the year and shall be intimated. In other words, the assessee had put out a promise by way of the aforesaid circulars creating an obligation for itself and a corresponding expectation qua the supplier societies. The contention raised on behalf of the Revenue that the circular merely created an obligation without any overriding charge and was not binding but depended upon the exercise of volition and discretion of the assessee does not merit acceptance. As can be seen from the circular, the circular creates an obligation to fix a final price that may be revised upwards, may be revised downwards, but fixation of a final price is a must. The only discretion that can be read from the circular is as to the quantum of the final price. In other words, the rate at which the final price is fixed. The concept of charge, is misplaced, in the circumstances. A charge in legal parlance means securing a debt or an obligation by offering a security in the nature of some property or a guarantee like Bank Guarantee. Hence, this contention does not carry the case of the Revenue any further.

14. The proposition that the payment in question amounted to application income is also misconceived. The said submission proceeds on the premise that income had already accrued to the assessee and was available for distribution. The Assessing Officer has used the phrase 'adjustment of profits' while the CIT (Appeals) has used the phrase 'application of income'. However, both the authorities, and the learned member who concurred with them, have lost sight of the legal position regarding accrual of profits and income. In the case of Commissioner of Income-tax, Gujarat Vs. Ashokbhai Chimanbhai, [1965] 56 ITR 42 (S.C.), the Hon'ble Supreme

Court was called upon to decide as to when the share of income or any part thereof from the partnership accrued to the assessee and whether it could be charged in hands of the assessee. The karta of a Hindu Undivided Family represented the Hindu Undivided Family in a partnership firm holding a share of five annas in a rupee in the profit and loss of the firm. As per the Deed of Partnership the accounts were to be made up at the end of every calendar year. On November 12, 1955, there was a partition in the family and the karta was allotted the five annas share in the firm. The karta, therefore, became full owner. While assessing the HUF, a question arose as to whether for the accounting period 27th October, 1954 to 14th November, 1955 whether the whole or any part of the five annas share of the profits of the firm for calender year 1955 accrued to the family. The Apex Court has enunciated the law in the following words:

" The words "accrue" and arise are used to contradistinguish the word "receive". Income is said to be received when it reaches the assessee; when the right to receive the income becomes vested in the assessee, it is said to accrue or arise.

Income becomes taxable on the footing of accrual only after the right of the taxpayer to the income accrues or arises, and in the case of an agreement which makes profits receivable at or on the happening of a contingency, the fact that the profits are the result of transactions spread over a period which covers a period preceding the happening of that contingency would not make the receipt liable to be paid to persons other than those who are entitled to receive it on the date on which it is actually received or became receivable.

In the gross receipts of a business day after day or from transaction to transaction lies embedded or dormant profit or loss. On such dormant profit or loss undoubtedly taxable profits, if any, of the business will be computed, but dormant profits cannot be equated to profits charged to tax under sections 3 and 4 of the Indian Income-tax Act, 1922. The concept of accrual of profits of a business involves their determination by the method of accounting at the end of the accounting year or any shorter period

determined by law.

"Profits" do not accrue from day to day or even from month to month and have to be ascertained by a comparison of assets at two stated points. Unless the right to profits comes into existence there is no accrual of profits and the destination of profits must be determined by the title thereto on the day on which they arise.

In the case of a partnership, where the accounts are to be made at stated intervals, the right of a partner to demand his share of the profits does not arise until the contingency which by operation of law or under a covenant of the partnership deed gives rise to that right has arisen.

15. Therefore, applying the aforesaid principles, it is not possible to state that merely because the Board resolved to fix the final purchase price and pay on the last day of the accounting period it would amount to application of profits. There is no finding recorded by any authority that profits had been ascertained by making up the accounts. Therefore, though on the last day when the resolution was made by the Board of Directors to pay the final price the gross receipts of the assessee, in which dormant profits lay embedded, could not be equated to profits chargeable to tax under the provisions of the Act. The case of the payment being application of income is, therefore, without any basis.

16. It is necessary to take note of the fact that the Assessing Officer had made disallowance in the alternative i.e. either under Section 28 or under Section 37 of the Act. The law as to how profits must be ascertained before being brought to tax under Section 28 of the Act is well established. Subject to any specific provision under the Act, the profits to be assessed have to be the "real profits" and are required to be determined on ordinary principles of commercial trading and commercial accounting. In other words, a claim for deduction for which there is no specific provision under the Act would be admissible under Section 28 of the Act having regard to the accepted commercial practice and trading principles, if it can be said to have been incurred for the purpose of business or in the course of carrying on the business and it is incidental to it.

17. Under Section 37 of the Act, the law requires to consider the purpose for which, and not the motive with

which, the expenditure is incurred, because purpose is different from motive. The section requires that the expenditure should be "wholly or exclusively" laid out or expended for the purpose of the business, but not that it should necessarily be laid out or expended for such purpose. In other words, even if the outlay is found to be unnecessary or unnecessarily large or benefits a third party, in absence of a specific provision prohibiting the outlay or restricting it, like Section 40A(2) of the Act, such outlay cannot be disallowed. A subjective standard of reasonableness cannot be adopted by the assessing authority to disallow a part of business expenditure. Similarly, it is not open to the authority to decide what type of expenditure should an assessee incur and in what circumstances. The jurisdiction of the Assessing Officer is confined to deciding the reality of the expenditure, namely, whether the amount claimed as a deduction was actually incurred or not ? In the present case, admittedly, the payment in question has been treated as a bona fide and genuine payment as recorded by the Tribunal.

18. Applying the aforesaid settled principles laid down for the purpose of determining allowability of the expenditure under either of the provisions, namely, Section 28 or Section 37 of the Act, it is not possible to state that the assessing authority was justified in making the disallowance. In fact the Assessing Officer, CIT (Appeals) and the Judicial Member have confused themselves. On one hand, the Assessing Officer states the payment of additional purchase price is disallowed under Section 28 or Section 37 of the Act, and also simultaneously states that it would amount to adjustment of profits, without determination as to whether at the point of time when the additional purchase price was paid profits had accrued or arisen in hands of the assessee. The overemphasis on the aspect of the basis or the data for fixing the final price by the Board of Directors created a situation whereunder the authorities lost sight of the settled position of law governing allowability or otherwise of such an expenditure.

19. The Tribunal has while recording the majority opinion rightly considered that for past years identical fact situation prevailed and in absence of any change in circumstances the department could not have re-agitated the issue. The legal position is well-settled in this regard. Similarly, the Tribunal was also justified in taking into consideration the factum of other similarly situated societies being allowed deduction of additional purchase price despite adopting the same modality of

working out and payment of final price.

20. Lastly, it is necessary to take note of the fact that the authorities have levelled an allegation of tax evasion against the assessee. The majority view of the Tribunal on this issue deserves acceptance. The Tribunal has taken note of the fact that the assessee - society is working under superintendence of various government organizations and there are nominee directors of the State Government and Financial Institutions on the Board of Directors. In the circumstances, the department has not been able to discharge the onus which was on it. That there is complete lack of evidence pointing to any 'personal gain' qua the assessee which is a co-operative society.

21. Therefore, to summarize :

(A) The expenditure in question cannot be termed to be application of income in absence of any evidence as to accrual of profits in light of settled legal position;

(B) The payment of additional / final price made on the last day of the accounting year is allowable under Section 28 of the Act, being a necessary deduction for ascertaining real profits on principles of commercial accounting; and

(C) The payment in question is alternatively allowable under Section 37 of the Act, having been incurred wholly and exclusively for the purpose of business carried on by the assessee in light of the evidence which has come on record.

22. The Tribunal was, therefore, right in law in deleting the addition of Rs.5,47,69,105/- by way of disallowance of additional purchase price towards purchase of milk, sanctioned by the Board of Directors on the last day of accounting year i.e. 31st March, 1984.

The question referred for the opinion of the Court is, therefore, answered in the affirmative i.e. in favour of the assessee and against the Revenue.

23. The Reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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